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No. 08-509

# In The Supreme Court of the United States

DENNY ROSS,

*Petitioner,*

v.

NANCY H. ROGERS,
Attorney General of the State of Ohio,

and

THE SUMMIT COUNTY COURT OF COMMON PLEAS,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit**

## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS


| | Page |
|---|---|
| INTRODUCTION | 1 |
| COUNTERSTATEMENT | 2 |
| 1. State Proceedings | 2 |
| 2. Federal Proceedings | 7 |
| REASONS FOR DENYING THE WRIT OF CERTIORARI | 9 |
| 1. AEDPA governs federal court review of Ross's petition for a writ of habeas corpus | 10 |
| 2. The decision of both the Ohio and Sixth Circuit Courts of Appeal are consistent with this Court's own precedent | 19 |
| CONCLUSION | 22 |

## TABLE OF AUTHORITIES

Page

CASES

*Arizona v. Washington*, 434 U.S. 497 (1978) .....*passim*

*In re Disqualification of Bond*, 94 Ohio St.3d 1221, 763 N.E.2d 593 (Ohio 2001).....5

*In re Disqualification of Carr*, 105 Ohio St.3d 1233, 826 N.E.2d 294 (Ohio 2004).....7

*In re Disqualification of Cirigliano*, 105 Ohio St.3d 1223, 826 N.E.2d 287 (Ohio 2004).....5, 7

*Ross v. Petro et al.*, 515 F.3d 653 (6th Cir. 2008) .....*passim*

*Simmons v. United States*, 142 U.S. 148 (1891).....19, 20, 21

*State v. Ross*, 2002 WL 31890088, 2002-Ohio-7317 (Ohio Ct. App. Dec. 31, 2002).....5, 6, 14

*State v. Ross*, 98 Ohio St.3d 1567, 787 N.E.2d 1231 (Ohio 2003).....6

*Thompson v. United States*, 155 U.S. 271 (1894).....20, 21

*United States v. Jorn*, 400 U.S. 470, 91 S.Ct. 547 (1971).....8

*United States v. Morris* (C.C. Mass. 1851), 26 Fed.Cas.No. 15,815 .....13

*United States v. Perez*, 22 U.S. (9 Wheat.) 579 (1824).....12, 19

*Wade v. Hunter*, 336 U.S. 684 (1949).....13

TABLE OF AUTHORITIES – Continued

Page

*Walls v. Konteh*, 490 F.3d 432 (6th Cir. 2007) ..... 11

*Williams v. Taylor*, 529 U.S. 362 (2000) ..... 11

CONSTITUTION

U.S. Const. amend. V ..... 8

STATUTES

Ohio Rev. Code § 2945.36 ..... 4

28 U.S.C. § 2254 ..... 10, 11, 18

28 U.S.C. § 2254(d) ..... 10, 11

RULES

Ohio Crim. Rule 29(C) ..... 5, 6

## INTRODUCTION

Nearly nine years have passed since Akron Police discovered Hannah Hill's beaten and violated body decomposing in the trunk of her car. During trial nearly eight years ago, the trial judge discovered and attempted to cure serious juror misconduct during deliberations. A note sent to the judge in deliberations not only informed the judge that one of the jurors was relying on an unadmitted polygraph test discussed in a newspaper article, but was also refusing to deliberate in good faith and just wanted to get the case over with. Rather than immediately declaring a mistrial, Judge Bond carefully and thoughtfully considered the positions of Mr. Ross and the prosecutor, and examined alternatives to a mistrial. The trial judge repeatedly offered Mr. Ross the option to voir dire the offending jurors, which Ross vehemently opposed. After the trial judge adjourned the case and discharged the jurors from the courthouse, Mr. Ross discovered that jurors had filled out verdict forms for acquittal on some, but not all, of the charges. It was only then that Mr. Ross accused the trial judge of violating his double jeopardy rights, insisting that she should have voir dired the jurors over his own objection.

By finding that Judge Bond exercised sound discretion in finding that a manifest necessity existed for mistrial at the time she made her judgment, both the Ohio Court of Appeals and the Sixth Circuit Court of Appeals have correctly recognized that Judge Bond carefully balanced Mr. Ross's double jeopardy rights

with the public's right to a truly fair and impartial jury verdict, free from any cloud of taint or corruption. The Ohio Court of Appeals therefore identified and properly analyzed the facts of this case based on the governing legal standard established by this Honorable Court in *Arizona v. Washington,* 434 U.S. 497 (1978). As such, the Ohio Court of Appeals decision did not result in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law.

This case does not present a compelling reason to grant a writ of certiorari because the Sixth Circuit Court of Appeals' judgment upholding the Ohio Court of Appeals did not do anything but thoughtfully and thoroughly apply a well-settled and properly stated rule of law to the particular facts of this case.

## COUNTERSTATEMENT

### 1. State Proceedings

Defendant Denny Ross stood trial on September 28, 2000 in the Summit County Court of Common Pleas, charged with aggravated murder, rape, kidnapping, tampering with evidence, and abuse of a corpse. *Ross v. Petro et al.,* 515 F.3d 653, 656 (6th Cir. 2008). Summit County Court of Common Pleas Judge Jane Bond presided over Ross's trial.

On October 25, 2000, Judge Bond dismissed the Kidnapping count. *Id.* at 657. Ross called no witnesses on his behalf.

The jury began deliberations on Friday, October 27, 2000. *Id.* The next day, on October 28, 2000, Judge Bond received the following note from the jury:

> "There is concern about a juror. I was approached by a spokesperson for four other jurors. From comments made by this juror these four jurors feel that he is agreeing with the group to expedite this process. I was told by these jurors that the following comments were made.
>
> No. 1, we need to get this done today.
>
> No. 2, why are we even discussing this. He has stated all along that he believes one thing but has all too quickly changed his vote to go along with the group. This morning this juror stated to me that we need to finish this today as he will be leaving after today because he has a problem at home but he did not want to put us in that position.
>
> To another juror he made the comment that he knows that Brad O'Born was innocent because he passed a polygraph test so Denny Ross had to be guilty.
>
> I have been asked if this juror can be released so that he may attend to his affairs at home and we can have an impartial and fair jury."

*Id.* The note was signed Juror No. 4. *Id.* The content of the note discussed a polygraph test that had not been admitted as evidence at trial, but had been discussed in a recent article in the Akron Beacon Journal newspaper. *Id.*

After receiving the note, Judge Bond gave both the prosecution and the defendant several hours to seek legal counsel, discuss the ramifications of the note, and suggest how the court should proceed in accordance with Ohio Rev. Code § 2945.36, (governing discharge of a jury). Judge Bond then held a hearing where she evaluated several options for dealing with the juror note. *Id.* Ross asked Judge Bond to order the jury to complete its deliberations, but declare a mistrial only if the verdicts were unfavorable. *Id.* Judge Bond rejected Ross's request for reservation of the right to mistrial. *Id.* Ross alternatively moved for a mistrial with prejudice, which Judge Bond rejected. *Id.*

Judge Bond "went on to repeatedly invite a request from either side to conduct a voir dire examination of any of the jurors. Neither the prosecution nor the defense wished to interfere with the pending deliberations." *Id.* at 658 (emphasis added). In fact, Judge Bond explained that Ross's objection to voir dire was "'vociferous' and 'adamant.'" Judge Bond then considered whether to seat an alternate juror, but rejected that possibility. *Id.* "She explained her concerns that at least one juror was considering evidence of guilt that had not been presented at trial and that the same juror was refusing to deliberate in

good faith." *State v. Ross,* 2002 WL 31890088 (Ohio Ct. App. Dec. 31, 2002), at ¶ 10. Judge Bond then declared a mistrial due to jury corruption.

"Facts were discovered after the trial court declared a mistrial that, unfortunately, have become the focus of Ross and others who look back at the mistrial decision in hindsight." *Id.* at ¶ 11. "Of particular interest to Ross and others is the fact that, unbeknownst to the trial judge or the parties at the time a mistrial was contemplated and declared, the jury had completed three verdict forms, finding Ross 'not guilty' of the most serious charges against him." *Id.* The mistrial decision came while the jury was still in the midst of deliberations over a count of involuntary manslaughter, the lesser-included offense of aggravated murder. *Ross,* 515 F.3d at 673 (Guy, J., dissenting).

Following the mistrial, Ross filed three motions: (1) a motion to perfect the three unanimous verdicts of acquittal, (2) a motion for judgment of acquittal pursuant to Ohio Crim. Rule 29(C), and (3) a motion to bar retrial of the case on double jeopardy grounds. *Ross,* 515 F.3d at 658. Ross also filed an affidavit of disqualification against Judge Bond with the Chief Justice of the Supreme Court of Ohio, requesting Judge Bond's removal because she had become a witness. *In re Disqualification of Bond*, 94 Ohio St.3d 1221, 763 N.E.2d 593 (Ohio 2001). As a result, the Chief Justice appointed visiting Judge Joseph Cirigliano to preside over the case. *In re Disqualification of*

*Cirigliano,* 105 Ohio St.3d 1223, 826 N.E.2d 287 (Ohio 2004), at ¶ 12.

On May 22, 2001, Judge Cirigliano conducted an evidentiary hearing to address Ross's motions. Ross called the following witnesses at the hearing: Judge Jane Bond, jurors Jill Coleman, Melissa Gribek, Thomas L. Orwig, Jr., and his defense attorney, David Chesnoff. The Sixth Circuit Court of Appeals summarized the relevant information gleaned from Judge Cirigliano's hearing on page 658 of its opinion in this case. On February 15, 2002, Judge Cirigliano granted Ross's motion to bar retrial on double jeopardy grounds.

Following the State's appeal, the Ninth District Ohio Court of Appeals reversed Judge Cirigliano's order barring retrial on double jeopardy grounds. *State v. Ross,* 2002 WL 31890088, 2002-Ohio-7317 (Ohio Ct. App. Dec. 31, 2002). The Supreme Court of Ohio determined that there was no substantial constitutional question warranting discretionary review, and declined jurisdiction on May 7, 2003. *State v. Ross,* 98 Ohio St.3d 1567, 787 N.E.2d 1231 (Ohio 2003).

On September 10, 2003, Judge Cirigliano denied both the motion to perfect the three unanimous verdicts of acquittal and the motion for judgment of acquittal pursuant to Ohio Crim. Rule 29(C). Judge Cirigliano then reversed himself in a subsequent decision announced on December 22, 2003, in which he granted Ross's motion for judgment of acquittal on

the rape charge and the corresponding capital specification for the aggravated murder charge. However, Judge Cirigliano overruled Ross's motion to perfect the verdicts.

The State then filed a second appeal with the Ninth District Court of Appeals on January 20, 2004. On February 19, 2004, the State filed a motion asking Judge Cirigliano to recuse himself. When Judge Cirigliano denied the motion, the State filed an affidavit of disqualification on March 17, 2004, requesting that the Chief Justice of the Supreme Court of Ohio remove Judge Cirigliano for exhibiting bias and prejudice against the State. In response, Judge Cirigliano filed a motion with the Chief Justice seeking to remove the Special Prosecutor[1] from the case. The Chief Justice denied Judge Cirigliano's motion in a published opinion. *Cirigliano,* 105 Ohio St.3d 1224. Judge Cirigliano then recused himself from the case on June 4, 2004.

## 2. Federal Proceedings

Ross waited until the State's second appeal had been fully briefed and scheduled for argument before filing a petition for writ of habeas corpus in the United States District Court for the Northern District

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[1] A special prosecutor represents Summit County because the elected Summit County Prosecuting Attorney recused herself from this case in 2001. See *In re Disqualification of Carr,* 105 Ohio St.3d 1233, 826 N.E.2d 294 (Ohio 2004), at ¶ 5.

of Ohio. Ross's petition alleged that the Ninth District Ohio Court of Appeals violated his Fifth Amendment double jeopardy rights when it upheld Judge Bond's mistrial decision. The District Court stayed all state criminal proceedings, and the State's second appeal remains pending.

On May 3, 2005, the Magistrate Judge recommended that the petition for a writ of habeas corpus be granted, resulting in objections from both Respondent and Ross. On August 22, 2005, the District Court granted Ross a writ of habeas corpus, finding that the Ohio Court of Appeals' decision represented an unreasonable application of clearly established federal law because "there is no way that any reasonable person would conclude that [Judge Bond] had employed 'scrupulous' exercise of judicial discretion to determine that a mistrial was a 'manifest necessity.'" *Ross,* 515 F.3d at 653 (explaining the District Court's application of this Honorable Court's plurality opinion in *United States v. Jorn,* 400 U.S. 470, 485, 91 S.Ct. 547 (1971)). Both parties appealed.

The Sixth Circuit United States Court of Appeals reversed the District Court's judgment on Jan. 25, 2008, and denied Ross's request for rehearing and rehearing en banc on July 17, 2008. *Ross, supra,* 515 F.3d 653.

## REASONS FOR DENYING THE WRIT OF CERTIORARI

Ross's claim that no manifest necessity existed for Judge Bond's *sua sponte* mistrial declaration does not warrant review by this Honorable Court.

Nearly nine years have passed since Akron Police discovered Hannah Hill's beaten and violated body decomposing in the trunk of her car. During trial nearly eight years ago, Judge Bond discovered and attempted to cure serious juror misconduct during deliberations. Rather than immediately declaring a mistrial, Judge Bond carefully and thoughtfully considered the positions of Mr. Ross and the prosecutor, and examined alternatives to a mistrial. Judge Bond repeatedly offered Mr. Ross the option to voir dire the offending jurors, which Ross vehemently opposed. After Judge Bond adjourned the case and discharged the jurors from the courthouse, Mr. Ross discovered that jurors had filled out verdict forms for acquittal on some of the charges. It was only then that Mr. Ross accused Judge Bond of violating his double jeopardy rights, insisting that she should have voir dired the jurors over his own objection. By finding that Judge Bond exercised sound discretion in finding that a manifest necessity existed for mistrial at the time she made her judgment, both the Ohio Court of Appeals and the Sixth Circuit Court of Appeals have correctly recognized that Judge Bond carefully balanced Ross's double jeopardy rights with the public's right to a truly fair and impartial jury verdict, free from any cloud of taint or corruption.

The Ohio Court of Appeals evaluation of Ross's double jeopardy claim was consistent with, and a reasonable application of, this Honorable Court's holdings regarding the standard governing review of a *sua sponte* mistrial declaration. The record establishes that the Ohio Court of Appeals correctly identified and applied well-established law in holding that Judge Bond exercised sound discretion in determining that a mistrial was necessary. *Ross,* 515 F.3d at 663, 670. Finally, Ross fails to establish any evidence of a circuit split as to the resolution of his double jeopardy claim under AEDPA. Instead, Ross's petition seeks review of a straightforward application of settled law to particular facts.

**1. AEDPA governs federal court review of Ross's petition for a writ of habeas corpus.**

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, establishes the standards for review of habeas petitions. To grant a petition for a writ of habeas corpus, a federal court must conclude that the state court's adjudication of the merits "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1) (2008). A federal habeas court cannot grant a writ under this clause "simply because that court concludes in its independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly."

*Williams v. Taylor,* 529 U.S. 362, 411 (2000). The AEDPA standard of review requires the federal courts to give considerable deference to state court decisions. *Walls v. Konteh,* 490 F.3d 432, 436 (6th Cir. 2007).

**a. This Honorable Court's holding in *Arizona v. Washington* sets forth the substantive law defining a defendant's double jeopardy rights upon a *sua sponte* mistrial declaration.**

AEDPA review of state court rulings on the declaration of a mistrial based on the possibility of juror bias obliges the federal courts to use two lenses of deference, i.e., 28 U.S.C. § 2254(d)(1), and the governing legal standard expressed in *Arizona v. Washington*, 434 U.S. 497 (1978). *See Ross,* 515 F.3d at 661.

This Honorable Court established the deference reviewing courts must give to trial courts when examining a court's *sua sponte* declaration of a mistrial:

> [W]e think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be

> used with the greatest caution, under urgent circumstances, and for very plain and obvious cases. * * * But, after all, they have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office.

*Washington*, 434 U.S. at 506, fn. 18 (quoting *United States v. Perez*, 22 U.S. (9 Wheat.) 579-580 (1824)). The trial judge's decision to grant a mistrial and retry a defendant is reasonable and does not violate the constitutional prohibition against double jeopardy if (1) there was a manifest or high degree of necessity for declaring a mistrial or (2) without a mistrial, public justice would have been diminished. *Washington*, 434 U.S. at 507-511. In interpreting the term manifest necessity, the Court declined to use Webster's definition, instead requiring a high degree of necessity before concluding that a mistrial was appropriate. *Id.* at 506.

The trial judge occupies the best position to determine whether a mistrial is warranted. As this Honorable Court explained in *Washington*:

> * * * [T]he overriding interest in the even-handed administration of justice requires that we accord the highest degree of respect to the trial judge's evaluation of the likelihood that the impartiality of one or more jurors may have been affected by improper comment.

* * *

> There are compelling institutional considerations mitigating in favor of appellate deference to the trial judge's evaluation of the significance of possible juror bias. He has seen and heard the jurors during the *voir dire* examination. He is the judge most familiar with the evidence and the background of the case on trial. He has listened to the tone of the argument as it was delivered and has observed the apparent reaction of the jurors. In short, he is far more "conversant with the factors relevant to the determination" than any reviewing court can possibly be.

*Id.* at 511, 513-514. See also, *Wade v. Hunter*, 336 U.S. 684 (1949). Furthermore, in *Washington*, this Honorable Court held that "[n]either party has a right to have his case decided by a jury which may be tainted by bias; in these circumstances, 'the public's interest in fair trials designed to end in just judgments' must prevail over the defendant's 'valued right' to have his trial concluded before the first jury impaneled." *Washington*, 434 U.S. at 516 (quoting *United States v. Morris* (C.C. Mass. 1851), 26 Fed.Cas.No. 15,815, p. 1323, 1328: "neither party can 'have a vested right to a corrupt or prejudiced juror, who is not fit to sit in judgment in the case.'"). Furthermore, "[b]ecause of the variety of circumstances that may make it necessary to discharge a jury before a trial is concluded, and because those circumstances do not invariably create unfairness to the accused, his valued right to have the trial concluded by a particular

tribunal is subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury." *Washington,* 434 U.S. at 516.

**b. The Sixth Circuit properly held that the Ohio court's application of the governing legal standard was neither clearly contrary to, nor an unreasonable application of, federal law as determined by this Court.**

The Sixth Circuit's holding in this case represents a thorough, thoughtful, and well-reasoned examination of the Ohio Court of Appeals' application of the controlling legal standard. The Sixth Circuit explained that "[t]he Ohio Court of Appeals was cognizant of its duty to ensure that Judge Bond exercised sound discretion." *Ross,* 515 F.3d at 553.

> Citing *Washington,* 434 U.S. at 514-16, 98 S.Ct. 824, the [Ohio] court observed: "To exercise 'sound discretion' in determining that a mistrial is necessary, the trial judge should allow the defense and prosecution to state their positions on the issue, consider their competing interests, and explore some reasonable alternatives before declaring a mistrial."

*Id.* (quoting *Ross,* 2002 WL 31890088, at ¶ 12). "By explicitly finding that Judge Bond had done these things * * * the court of appeals at least implicitly held that she had exercised sound discretion. Hence,

petitioner has failed to show that the court of appeals' opinion is based on application of an erroneous standard of review." *Ross,* 515 F.3d at 663.

"There is no dispute regarding the facts and circumstances encountered collectively by the court and counsel during jury deliberations." *Id.* Once the decision was collectively made not to voir dire any juror, the factual foundation for Judge Bond's decision to declare a mistrial, sufficient or not, was established." *Id.* The question Judge Bond and later the court of appeals confronted was one of law and discretion: whether the undisputed facts supported a finding of manifest necessity, such that a mistrial could be declared without prejudice to the state's right to reprosecute." *Id.* "Further, as *Washington* makes clear, the failure of a lower court to explicitly explain its ruling in terms of the governing standard is not determinative, as long as the record provides sufficient justification for the ruling. 434 U.S. at 516-17, 98 S.Ct. 824." *Id.* The Sixth Circuit offered a detailed explanation of why the merits of the Ohio Court of Appeals' decision comported to the governing legal standard:

> The court of appeals' deference to Judge Bond's decision not to voir dire the jurors is also consistent with Washington's insistence on appellate deference to the trial judge's evaluation of possible juror bias: "[T]he overriding interest in the evenhanded administration of justice requires that we accord the highest degree of respect to the trial judge's

evaluation of the likelihood that the impartiality of one or more jurors may have been affected by the improper comment." Id. at 511, 98 S.Ct. 824. In any event, the court of appeals' ratification of Judge Bond's failure to conduct voir dire has not been shown to be an unreasonable application of controlling federal law. In response to petitioner's argument that Judge Bond did not adequately consider all alternatives before finding manifest necessity for mistrial, the court of appeals correctly held that she had no duty to consider every conceivable alternative. That she exercised sound discretion, the court concluded, is evidenced by the fact that she did consider some reasonable alternatives before declaring a mistrial. The court of appeals noted that Judge Bond: (1) considered voir dire examination of the jurors, but deferred to the parties' wishes; (2) considered the possibility of replacing the problem juror with an alternate, but reasonably rejected this remedy as insufficient to remove the taint; and (3) considered defendant's request to allow the jury to continue deliberating (without prejudice to his right to a mistrial if the jury returned an adverse verdict), but rejected this proposal as unfair to the public's interests.FN7

FN7. In continuing to quarrel with Judge Bond's rejection of this latter proposal, petitioner continues to ignore the fact that the import of the foreperson's note was at least as unfavorable to the prosecution as it was to his interests. See n. 3, supra. Because

> the prejudicial import of the note cut both ways, Judge Bond rightly concluded, as the court of appeals held, that petitioner's putative reservation of the right to a mistrial in the event the verdict was not satisfactory to him was unfair and unreasonable.
>
> Again, the court of appeals' analysis in this regard has not been shown to be contrary to or an unreasonable application of controlling federal law. In Washington, the Court made it clear that a court need not exhaustively consider all possible alternatives before finding "manifest necessity" for a mistrial. Even where an alternative remedy as simple as a cautionary instruction might have been effective, rendering declaration of a mistrial not "necessary" in the strict, literal sense, the Washington Court declined to second-guess the soundness of the trial court's exercise of discretion. 434 U.S. at 511, 98 S.Ct. 824.

*Id.* at 668-69.

The singular focus of Ross's manifest necessity argument is not whether Judge Bond exercised sound discretion at the time she declared the mistrial (based on those facts known to her at the time), but rather on criticizing how she handled the discovery of the verdict forms after the mistrial and discharge of the jury. On this point, the Sixth Circuit squarely concluded hindsight analysis of the verdict forms could not be the *sine qua non* of the manifest necessity calculus. "[T]he Ohio Court of Appeals did not err by

excluding the verdict forms from its review of Judge Bond's mistrial ruling." *Ross,* 515 F.3d at 667.

> An appellate court is hardly at liberty to use the 20/20 vision of hindsight in evaluating whether a mistrial decision represented an exercise of sound discretion, but must, in the exercise of due deference, necessarily confine its review to the facts known to the trial judge when the mistrial was declared.

*Id.* Even the dissenting opinion seems to agree that manifest necessity existed at the point Judge Bond entered her mistrial ruling, although it would have required her to recall the dismissed jurors upon discovering the verdict forms from the uncompleted deliberations. *Id.* at 671 (Guy, J., dissenting).

On this point, Respondent submits that the Sixth Circuit opinion is appropriate, both in terms of AEDPA (requiring deference to the State court's application of federal law), as well as *Washington* (requiring deference to the trial judge's judgment regarding the potential of juror taint). The approach advocated by Ross and the dissent would necessarily contradict the *Washington* Court's requisite deference to the trial judges who must make the very case-specific determinations of juror misconduct based on the varied and unpredictable situations that arise in criminal trials. *Washington,* 434 U.S. at 497.

**2. The decision of both the Ohio and Sixth Circuit Courts of Appeal are consistent with this Court's own precedent.**

Although Ross's petition places great weight on this Honorable Court's historic decision in *United States v. Perez*, 22 U.S. (9 Wheat.) 579 (1824), he omits two other cases decided by this Honorable Court, relied on in *Washington*, that strongly reinforce the result reached by both the Ohio and Sixth Circuit Courts of Appeal.

In *Simmons v. United States*, 142 U.S. 148 (1891), a case with facts squarely on point, the trial judge declared a mistrial after a newspaper article reported the content of a letter written by the defense attorney in which he denied that one of the jurors knew the defendant. The trial court in *Simmons* acted "[w]ithout determining the truth or falsity of the charge, and without examining the jurors to ascertain what influence the story had upon them." *Washington*, 434 U.S. at 512. The *Simmons* Court held that neither party "can have a vested right to a corrupt or prejudiced juror, who is not fit to sit in judgment of the case." *Simmons*, 142 U.S. at 154. The *Simmons* Court ultimately held that manifest necessity justified retrial "in order to prevent the defeat of the ends of public justice," due to the possibility that outside information biased the jury. *Id.*[2]

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[2] The *Simmons* Court explained

(Continued on following page)

In *Thompson v. United States*, 155 U.S. 271 (1894), the trial judge learned, after the jury had been sworn, that one of the jurors hearing the case had also served on the grand jury that indicted Thompson. *Id.* In response, the trial judge discharged the jury over Thompson's objection and called a new jury to hear the case. *Washington,* 434 U.S. at 512. "Since it is possible that the grand jury had heard no more evidence – and perhaps even less – than was presented at trial, and since the juror in question may have had no actual bias against the defendant, the record did not demonstrate that the mistrial was strictly 'necessary.'" *Id.* Nevertheless, "[t]here can be no doubt * * * about the validity of the conclusion that the possibility of bias justified the mistrial." *Id.*

Ross maintains that a voir dire of the jury would have revealed that the jury verdicts were not necessarily a direct byproduct of the taint identified in the note. Both *Washington,* as well as *Simmons* and *Thompson,* however, strongly support the Sixth

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> There can be no condition of things in which the necessity for the exercise of this power is more manifest, in order to prevent the defeat of the ends of public justice, than when it is made to appear to the court that, either by reason of facts existing when the jurors were sworn, but not then disclosed or known to the court, or by reason of outside influences brought to bear on the jury pending the trial, the jurors, or any of them, are subject to such bias or prejudice as not to stand impartial between the government and the accused.

*Simmons*, 142 U.S. at 154.

Circuit's conclusion that "it is practically inconceivable that the taints stemming from both the juror corruption and the *ex parte* communications could have been cured in such a way as to render the tentative verdict forms acceptable as reflective of the jury's final verdict." The Sixth Circuit's conclusion falls right in line with the *Washington* Court's caution that it is the preservation of the integrity and impartiality of the tribunal's itself, not whether the jury corruption might have tactically benefited or prejudiced the defendant, that the manifest necessity standard must hinge upon. *Washington,* 434 U.S. at 512-13.

In light of the very clear and well-settled principles outlined in *Simmons, Thompson,* and *Washington,* there can be little argument that the Sixth Circuit did anything but thoughtfully and thoroughly apply a well-settled and properly stated rule of law to the particular facts of this case.

## CONCLUSION

For the foregoing reasons, Ross's petition for writ of certiorari should be denied.

Respectfully submitted,

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